

LEGAL NEWS FROM THE CASEY LEGAL CENTER

BANKRUPTCY

Most military personnel and their families handle their financial affairs in a responsible and timely manner. Those who have problems usually seek timely assistance from financial counselors, such as those at ACS. Occasionally, however, an individual will be so much in debt that bankruptcy is the only solution.

Bankruptcy is a federal court proceeding that allows people who cannot pay their bills to receive a fresh start. The bankruptcy laws were completely revised in 1978. These revisions generally leave the debtor in a better position than past bankruptcy laws. Under the current laws, the debtor is usually able to retain most personal property. Creditors are severely restricted in what, and how much, they may collect. When a bankruptcy is filed, creditors must immediately stop trying to collect debts until the case is decided.

Many people believe that if they file bankruptcy they will lose everything. This is not true. The government wants to make sure that you have enough to live on so that you can "start over". Most bankruptcy filers are able to keep their family home, automobile and personal items as clothing.

Bankruptcy cannot cure every financial problem. In bankruptcy it is usually not possible to eliminate right of secured creditors such as those who own mortgages and car loans. Those creditors may be forced to take payment over time in the bankruptcy process, and bankruptcy can eliminate your obligation

to pay additional money if the property is taken. Bankruptcy usually will not discharge debts you fail to list during the proceedings, or those that have special treatment under bankruptcy laws, such as child support, alimony, most student loans, court ordered restitution, criminal fines, and some taxes. You may also remain liable to creditors whom you fail to properly notify of the bankruptcy proceedings. Cosigners of debts are not protected if the primary debtor files bankruptcy. Finally, debts that arise after bankruptcy if filed are not protected.

Even though there are no laws prohibiting a person who files bankruptcy from getting credit later, the reality is that it is tough to obtain credit after filing bankruptcy. Normally, filers are able to slowly rebuild their credit rating. In addition, some creditors will issue credit cards in as little as a year after you file bankruptcy, provided that you open a savings account with their institution.

There are four types of bankruptcy:

Chapter 7 is known as "straight" bankruptcy or "liquidation". It requires a debtor to give up property which exceeds certain limits, so the property may be sold to pay creditors. In a chapter 7 bankruptcy you file a petition asking the court to discharge your debts. The court eliminates your debts in exchange for you giving up all property that is not exempt to be sold. The proceeds from selling your property is distributed to your creditors. If you want to keep property such as a home or car,

but are behind on payments, chapter 7 will probably not be the right choice for you. It does not eliminate the right of mortgage holders or car loan creditors to take your property to satisfy the debt. There are state and federal laws concerning what is exempt under chapter 7. You are able to choose which law you want to apply.

Chapter 11 is known as reorganization and is used by businesses. It does not apply to individual debtors unless they have very large debts.

Chapter 12 is reserved for family farmers.

Chapter 13 is called debt adjustment. It requires a debtor to file a plan to reorganize debts, paying them over a period of time from current income. Chapter 13 may also reduce the amount of overall debt so that the debtor only pays a percentage of the total debt. The most important thing about a chapter 13 is that it allows the debtor to keep valuable property which might otherwise be lost, like your home and car. You should consider a chapter 13 if you own your own home and are in danger of losing it because of money problems; are behind on debt payments but can catch up if given extra time; or have valuable property which is not exempt

under chapter 7, but you can afford to pay creditors over time. Chapter 13 is often viewed more favorably than chapter 7 by bankruptcy courts and future creditors.

Although it is possible to file a bankruptcy case without an attorney, it is usually not recommended. The process is difficult and you may lose property or other rights if you do not know the law. As with any area of the law, it is important to carefully select a bankruptcy attorney who will respond to your personal situation. When you first meet a bankruptcy attorney, you should be prepared to answer the following questions:

- What types of debts are causing you the most trouble?
- What are your significant assets?
- How did your debts arise?
- Are your debts secured?
- Is any action about to occur to foreclose or repossess property to turn off utility services?
- What are your goals in filing the case?

Filing bankruptcy is a serious matter and may have consequences that will affect you for a very long time. For more information, contact your local legal assistance office.